

EXHIBIT D



ENGLISH

(AP Photo/Eduardo Verdugo)

✍ 4 FEB 2021 | COMMENTARY

A Year of Setbacks to Honduras' Anti-Corruption Efforts

by Julia Aikman Cifuentes and Adriana Beltrán

On January 19, 2020, the mandate of the OAS-backed Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH, by its Spanish acronym) was allowed to expire. Negotiations [broke down](#) over the Honduran government's unwillingness to allow the mission's collaboration with a special prosecutorial unit.

The end of the MACCIH's mandate was the first of several deliberate setbacks to efforts to combat corruption in Honduras. Throughout 2020, each of these setbacks attracted significant concern at national and international levels—especially given the signs that corruption has reached the highest levels of power in Honduras. This was evidenced in U.S. court files that [identify President Juan Orlando Hernández](#) as having allegedly accepted bribes from drug traffickers and used Honduran armed forces to protect cocaine shipments (the president has not been charged in the case).

Now, a year since the MACCIH's demise, Hondurans find themselves in the throes of a worsening pandemic, struggling in [the aftermath](#) of recent hurricanes Eta and Iota that affected more than 4 million people, and left with a government far less equipped to meet the needs of its people. [Amidst recent reports](#) of groups of Honduran migrants fleeing violence and poverty by traveling north (and being met with tear gas and beatings from Guatemalan security forces) **the need for widespread support of an anti-corruption agenda—in order to address the institutional rot that is driving migration—is unequivocal.**

A new penal code

Following the expiration of the MACCIH's mandate, one of the first signs of a larger blowback against anti-corruption efforts was the passage of a [controversial new penal code](#). Opposed by Honduran civil society and international observers alike, the code went into effect in late June 2020 after its approval was stalled for months due to pushback.

Among other worrisome measures, the code [reduces sentences](#) for corruption-related crimes (including misuse of public funds, abuse of authority, influence trafficking, fraud, and illicit enrichment). Additionally, under the new code, those sentenced to less than five years have the possibility of substituting prison sentences with less restrictive measures if they can repay the funds lost to corruption.

The code also reduces prison sentences for drug trafficking crimes, going from 15 to 20 years to [four to seven years](#). It also gives drug traffickers the option of collaborating with authorities in return for a [reduction of a third of their sentence](#).

Backsliding in emblematic corruption cases

As Honduran civil society warned, **the new penal code would hamper major corruption investigations**. Recent beneficiaries of the new penal code include 14 former officials implicated in a case involving embezzled funds at the

Honduran Social Security Institute (*Instituto Hondureño de Seguridad Social*, IHSS). Between 2010 to 2014, a [criminal network led by the institute's then-director Mario Zelaya](#) embezzled an estimated \$300 million in public funds, resulting in the deaths of an estimated 2,800 patients from poor treatment and a lack of proper equipment and medication. On top of this, an estimated [\\$90 million](#) of the misappropriated funds helped finance the 2013 presidential campaign of Juan Orlando Hernández.

The uncovering of the case provoked [public outrage](#) as hundreds of thousands Hondurans, known as the “indignant” movement, took to the streets to demand Hernández’s resignation, as well as the creation of an international anti-corruption commission—what would eventually become the MACCIH. In December 2020, [14 ex-directors of the IHSS](#), including Mario Zelaya, were acquitted of public corruption charges under the new penal code. **The acquittal of the 14 officials, involved in one of Honduras’ largest-ever corruption scandals, feeds major concerns about the new penal code’s potential for hindering accountability.**

In another worrisome development, in August 2020 a Honduran court [dismissed charges against 22 people](#) accused in the so-called “Pandora” case, one of the most emblematic investigations that the MACCIH worked on with the Public Prosecutor’s Office. The [probe uncovered](#) that around \$11.7 million designated to agricultural projects had been diverted to several foundations and NGOs. A portion of the embezzled funds then went to electoral campaigns for the Liberal and National parties, including that of Juan Orlando Hernández.

While investigations into this case began in 2016, the investigation was stalled for months due to a [drawn-out judicial reform](#) of Honduras’ accounting body that weakened the ability of the Public Prosecutor’s Office to advance the case. [Among the accused](#) whose cases were dismissed are five current congressmen, a former mayor, a former governor, and the ex-husband of the president’s late sister. The court’s decision was denounced by the special prosecutor’s office dedicated to investigating corruption—the Special Prosecutor’s Unit against Corruption Networks (*Unidad Fiscal Especializada Contra Redes de Corrupción*, UFERCO). The office said that the decision [was unfounded](#) and had ignored several necessary procedural requirements.

The IHSS and Pandora cases are just two examples of emblematic corruption probes that have faced setbacks in Honduras in the past year. Since the MACCIH’s departure, judges have issued controversial rulings in key cases, demonstrating the influence of corrupt networks within the judiciary. These include:

The “Gualcarque fraud” case	The case saw 16 people accused of various corruption-related crimes in connection to energy company DESA’s alleged attempts to illegally gain concessions and licenses for the development of a hydroelectric project in Lenca Indigenous territory. The case relates to complaints made in 2010 by Lenca defender Berta Cáceres, who was later assassinated for her activism. DESA’s ex-president Roberto David Castillo , is accused of masterminding Cáceres’ murder. In mid-December 2020, the Honduran Constitutional Chamber ruled in favor of 10 of the defendants . The decision was publicly condemned by the head of UFERCO. The case against the other six has stalled.
The “first lady’s petty cash” case	Between 2011 to 2015, a money laundering ring of nine people drained public funds (nearly \$660,000) through fake contracts. In August 2019, former First Lady Rosa Elena Bonilla was found guilty of embezzling government funds and fraud (sentenced to 58 years total); as was her private secretary Saul Escobar for fraud against the state (sentenced to 48 years); her brother-in-law Mauricio Mora was acquitted. However, in March 2020, the Supreme Court accepted Bonilla’s appeal and unanimously voted for a retrial.
The “Patuca III” case	This case consists of a corruption network in which 10 people allegedly defrauded the Honduran state of several million lempiras through the national electric power company (ENEE by its Spanish acronym). In the process of inviting companies to submit bids for a hydroelectric dam, known as the Patuca III project, the accused allegedly assigned overvalued million dollar contracts (in some cases by up to 149 percent). In November 2020, a court acquitted nine of the accused , citing insufficient evidence provided by the Public Prosecutor’s Office.
The “impunity pact” case	In this case, prosecutors accused four members of the Honduran Congress of modifying the federal budget in order to impede investigations by the Special Prosecutor’s Unit Against Impunity and Corruption (UFECIC). Four officials ended up facing charges in the so-called “impunity pact” case; however, the judge decided to dismiss the charges against two of them. In November 2020, the public prosecutor’s petition for an oral trial against one of the accused was overruled and archived. The oral trial for the fourth ex-official is still pending.

Anti-corruption prosecutors are under-resourced

With the end of the MACCIH came the end of the Special Prosecutor’s Unit against Impunity and Corruption (UFECIC), a body under the Public Prosecutor’s Office (MP) that worked in tandem with the MACCIH in the investigations of corrupt networks. UFECIC was replaced with the Special Prosecutor’s Unit against Corruption Networks (UFERCO) —however, **the office lacks resources and has received insufficient national and international support, debilitating anti-corruption efforts in Honduras.**

While many of the UFECIC's personnel went on to work at UFERCO, the latter is operating with half the personnel and a limited capacity to carry out investigations. Late last year, there were only [eight prosecutors](#) in charge of ongoing cases, as well as any incoming cases. Of those eight, only six were working at the time due to health reasons. UFERCO's lead prosecutor Luis Javier Santos said that the unit has [26 pending cases and 116 lines of investigations](#) that UFECIC left them. Given the amount of open investigations inherited by UFERCO and the added load of new investigations, **it is critical that the unit be adequately staffed and resourced to bolster its investigative and prosecutorial capacities.**

The Secretariat of Transparency

In November 2020, the executive branch created, through an executive decree, the [Secretariat of Transparency](#), which would be in charge of handling all transparency-related policies in Honduras. However, as [several groups](#) have warned, **the new secretariat could weaken existing accountability and anti-corruption initiatives**, as the body could take resources away from and duplicate tasks already carried out by the Institute for Access to Public Information (IAIP), the Superior Court of Accounts (TSC), and the National Corruption Council (CNA). The creation of the new secretariat also drew concerns as it could further concentrate transparency mechanisms within the executive branch—meaning that this new body could centralize access to public data and decide which irregularities should be investigated by the Public Prosecutor's Office or the TSC (the state body responsible for ensuring that state assets are used properly).

Corruption during COVID-19

MACCIH's departure, compounded with the other pushback efforts intended to weaken the fight against corruption, **has increased opportunities for corrupt officials to take advantage of Honduras' COVID-19 response and raid state coffers.**

As of December 2020, of the \$232.9 million spent by the Honduran state to combat COVID-19, [\\$85.4 million was spent by INVEST-H](#)—one of the government bodies handling COVID-19 relief contracts. INVEST-H is [accused of several](#) irregularities in equipment and medicine purchases.

While there are many alarming cases that point to INVEST-H's apparent misuse of public funds, a particularly noteworthy one involves mobile hospitals and the institute's former director, Marco Bográn. According to the CNA, INVEST-H massively overspent in contracts involving [seven mobile hospitals](#). Five months after the funds were disbursed, only [two of the seven](#) mobile hospitals had arrived in Honduras— inoperative because they arrived without the necessary equipment. INVEST-H paid more than [three times the market value](#), resulting in a loss of over \$32.5 million in public funds. Both Bográn and former INVEST-H manager Alex Moraes were accused of embezzlement; however, in October the judge handling the case issued them both [alternative measures to prison](#). In another case, investigators have asked for a [three-month extension](#) to continue their probe into the matter.

The failure of Honduran institutions to adequately use public funds to combat the pandemic has also heightened concerns around potential corruption in hurricane relief efforts, as other countries may be [hesitant to help](#) for fear their assistance will be misused.

Looking ahead

The mass protests that led to the MACCIH's creation— and the protests that followed its departure—point to **the widespread yearning for a country that prioritizes its people over the criminal interests of corrupt networks and elites**. In a country ranked [146 out 180](#) for its levels of corruption—in which [12.5 percent of its GDP](#) was lost to corruption in 2018—every regression is costly. Due to the pandemic alone, Honduras is expected to see a [12 percent drop](#) in its GDP, as well as an [expected rise in its poverty rate](#)—going from 60 to 70 percent—and its [extreme poverty rate](#), which may reach 50 percent. This rise in poverty will disproportionately impact Indigenous peoples and members of the Garifuna and Afro-descendant communities in Honduras. The country's ability to recover and reconstruct, following record-breaking hurricanes and a global pandemic, is severely threatened by endemic corruption that has reached the highest levels of government.

In this climate, [civil society organizations and independent media](#) have played a critical role in monitoring government corruption and abuse. Organizations like the CNA and independent news outlets like *Contracorriente*, among others, have been essential in uncovering corruption cases and conducting evaluations of government agencies, particularly in the MACCIH's absence.

With appropriate international support, the civil society efforts to keep Honduras' anti-corruption fight alive can find its second wind. With the incoming Biden administration, U.S.-Honduras relations will once again shift, this time

bringing attention to the importance of combating corruption and hopefully garnering more international support for Honduras' fight. Biden has committed to a [\\$4 billion regional strategy](#) to address root causes of migration, and has placed combating corruption at the heart of U.S. policy towards Central America.

To be effective, the Biden administration [should make clear](#) from the start that it will not turn a blind eye to corruption and respond promptly to any attempts to undermine anti-corruption efforts. In order to strategically direct foreign aid, policymakers should look to the [Central America Monitor](#)—a tool that provides comprehensive analysis on levels of progress and opportunities for improvement in Central America's efforts to strengthen justice and security institutions and improve governance—and condition aid to concrete accountability and transparency commitments. Additionally, the Biden administration's clear support of civil society actors, journalists, and those within the Honduran government that have been leading the fight against corruption and impunity will be essential in the implementation of this strategy.

[f SHARE](#)[TWEET](#)

SIGN UP TO GET THE LATEST ON ANALYSIS & POLICY

SIGN UP

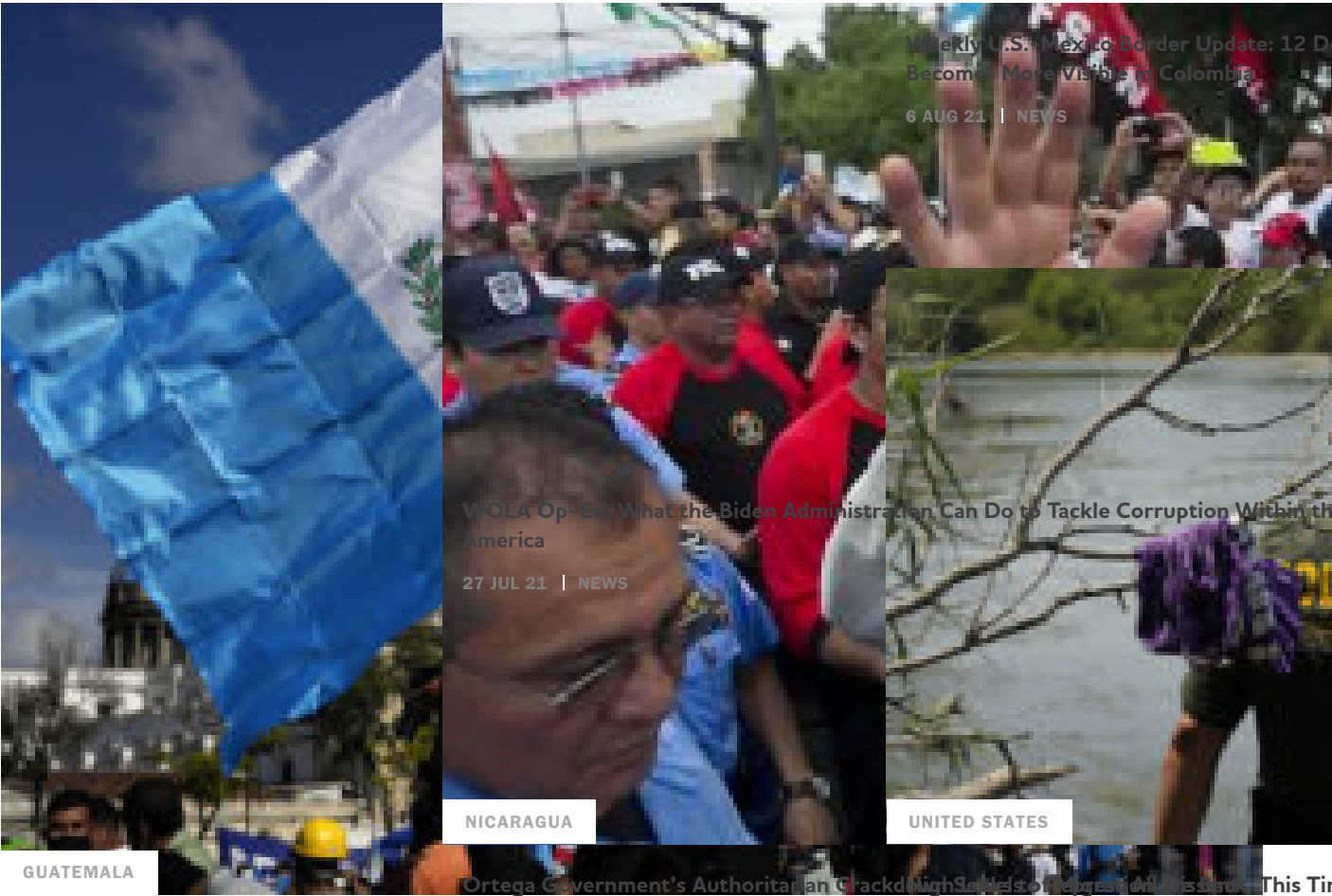


HONDURAS

Q&A: THE THREATS FACING HONDURAS'S FIGHT AGAINST CORRUPTION

15 JAN 20 COMMENTARY

Related Content



GUATEMALA

NICARAGUA

UNITED STATES

Ortega Government's Authoritarian Crackdown on High-Scale Corruption: A Warning for This T...

18 AUG 21 | COMMENTARY

5 AUG 21 | COMMENTARY

18 AUG 21 | COMMENTARY

CONTACT WOLA

Washington Office on Latin America
1666 Connecticut Ave NW, Suite 400
Washington, DC 20009
Tel: (202)797-2171

HELP US CREATE REAL IMPACT

DONATE

Q Click here to search all of WOLA's analysis

SEARCH